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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 Norma Merrell, et al.,) Civil No.06cv2068 IEG (AJB)
11)
12 Plaintiff,)
13 v.) Order Denying Petition to Perpetuate
14) Testimony Before Action under Rule 27
15 A. Dennis Lambert, Robert Rides At The) [Doc. No. 1]
16 Door, A.K.A. Robert “Smokey” Doore, a.k.a.)
17 Robert J. Doore, Sr., et al.,)
18)
19 Defendants.)
20 _____)
21)

22 Plaintiff moves for an Order granting her Petition to Perpetuate Testimony Before Action under
23 Rule 27 of the Federal Rules of Civil Procedure. Plaintiff timely served the expected adverse parties
24 and a hearing was held on the record on November 8, 2006, before Judge Battaglia. Appearing on
25 behalf of the Petitioner was Lyndsay Heller, Esq. and J.E. ‘Ring’ Smith, Esq. No appearance was made
26 by either of the adverse parties named in the Petition. Based upon the petition, arguments of counsel
27 and for the reasons set forth herein, the Petition is hereby DENIED without prejudice.
28

22 ***I. The Petition***

23 ***A. Facts Alleged***

24 Petitioner alleges a course of fraudulent and unlawful conduct by two adverse parties, A. Dennis
25 Lambert (President of Glacier International Depository, Ltd. (“GID”)) and Robert J. Doore, Sr.
26 (Chairman of GID) to entice Petitioner, as well as others, to deposit or invest funds in exchange for
27 either a leveraged position and/or stock and an ownership position in GID and then provided nothing for
28 their deposit or investment. GID is a banking depository licensed and authorized by the State of

1 Montana, located on the Blackfeet Indian Reservation. Petitioner will seek to recover \$379,000 together
2 with any appropriate penalties, fees and costs.

3 During the course of the hearing, Mr. Smith informed the Court that he had a telephone
4 conference call with attorney Channing Harterlius representing adverse party Mr. Doore, who was
5 present during the call. Mr. Doore was vague as to whether or not he had in his possession documents
6 being sought by way of the Petition. Mr. Ring subsequently sent a letter to both adverse parties
7 summarizing the telephone conversation with Messrs. Harterlius and Doore, and outlining the documen-
8 tation sought, but has received no response as of the date of the hearing from either adverse party.

9 Additionally, Mr. Smith informed the Court that GID was no longer in business and that the
10 corporate charted had been revoked by the State of Montana.

11 ***B. Testimony Sought***

12 Petitioner seeks accounting books and records, GID Corporate records including minutes of
13 meetings, resolutions, financial reports, solicitations, stock shares certificates, authorizations for
14 warrants, records reflecting non-transfer of promised GID stock, information concerning all bank
15 accounts where investors' and depositors' funds were placed. Petitioner also seeks oral testimony from
16 the two named individuals regarding the alleged fraudulent course of conduct. During the hearing,
17 Petitioner's counsel, Mr. Smith, produced a list of documents sought by the Petitioner to the Court for
18 inspection.

19 ***II. Discussion***

20 There is no absolute entitlement to early discovery under Rule 27. *Application of Eisenberg*, 654
21 F.2d 1107 (5th Cir.1981). "Abuse of the rule by potential plaintiffs, who might try to use it as a means
22 of discovery to enable them to draw a complaint seems to be avoided by the requirement of Rule 27 that
23 the party seeking the deposition be unable to bring the suit or cause it to be brought." *State of Nev. v.*
24 *O'Leary*, 63 F.3d at 936. Refusal to permit discovery under Rule 27 prior to the institution of suit is a
25 ruling with only temporary application as the Petitioner is free to seek discovery once the anticipated
26 action has been filed.¹

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28 ¹ *Application of Eisenberg*, 654 F.2d 1107 (5th Cir. 1981).


1 The Petition is therefore DENIED on the grounds that Petitioner is seeking this information in
 2 order to plead her allegations with the requisite specificity² and states only conclusory statements
 3 without specific facts that would tend to indicate that the evidence sought to be perpetuated is at risk of
 4 loss.³ The Court finds no merit to Petitioner's assertion that evidence sought to be perpetuated is in any
 5 danger of being lost.⁴

6 ***III. Conclusion***

7 For the reasons set forth above, the Court finds that this case is not one which is appropriate to
 8 grant a petition to perpetuate testimony as Petitioner's requests are beyond the intended scope of Rule
 9 27 and the Petitioner has failed to make the requisite showing of good cause necessary to warrant this
 10 extraordinary remedy. The Petition is hereby DENIED WITHOUT PREJUDICE.

11 IT IS SO ORDERED.

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 13 DATED: November 9, 2006

14 
 15 Hon. Anthony J. Battaglia
 16 U.S. Magistrate Judge
 17 United States District Court
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21 ² *Petition of Ernst*, 2 F.R.D. 447 (S.D. Cal 1942)(Petition must demonstrate a danger of losing
 22 the evidence by delay, but ordinarily a showing that the petitioner is unable to bring the expected action
 23 is sufficient to warrant an order for perpetuation of testimony.); *Petition of Gurnsey*, 223 F. Supp 359 (D.C. Cir. 1963)(Rule 27 does not provide a method of discovery to determine whether a cause of action
 24 exists and if so, against whom the action should be instituted.); *Petition of State of N. C.*, 68 F.R.D. 410 (S.D.N.Y.1975)(granting of petition not warranted where petitioner was unable to bring the underlying
 25 action because it lacked facts necessary to frame a complaint).

26 ³ *Ash v. Cort*, 512 F.2d 909 (3rd Cir. 1975)(Rule 27 was not intended to serve as a substitute for
 27 discovery, but is available only in special circumstances to preserve testimony or evidence that could
 28 otherwise be lost.); *Lombardo's Inc. v. Prince Mfg., Inc.*, 753 F.2d 974 (11th Cir. 1985).

⁴ Additionally, the Court notes that by serving the Petition on the adverse parties, the Petitioner
 has effectively made a preservation request which will provide other remedies once suit is filed against
 these adverse parties if they fail to preserve all documents and information relevant to the impending
 litigation.